IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 1614 of 1994

Date of Decision : 17th September, 2007

M/s Kirloskar Pneumatic Company Ltd.

.... Petitioner

Versus

M/s Indson Farm Machinery Traders.

... Respondent.

CORAM : HON'BLE MR. JUSTICE S.D. ANAND

Present : Mr. R.S. Bajaj, Advocate,
for the petitioner.

Mr. Vikas Singh, Advocate,
for the respondent.

S.D. Anand, J.

The present revision petition is directed against the order dated 03.12.1993 vide which the learned First Appellate Court upheld the finding recorded by the learned Trial Court on 05.04.1991 allowing the application (for a reference to arbitration) filed by the plaintiff-respondent.

Mr. R.S. Bajaj, the learned counsel for the petitioner, argued at the very outset that the application itself which had been preferred by the plaintiff-respondent under Section 8 read with Section 20 of the Indian Arbitration Act was incompetent inasmuch as the currency of period of the impugned agreement was already over by the time the application aforementioned came to be filed. The plea raised thereby is that an

application for reference to the arbitration could be filed during the period of currency of the agreement.

The plea is completely bereft of merit for the reasons indicated hereunder:-

There is no law which provides that the arbitration clause can be brought into play only during the period of currency of the agreement. Even otherwise, it is in evidence that the commercial relationship between the parties continued even after the initial agreed period of two years was over. It follows therefrom that the parties continued to deal with each other in the commercial context even thereafter. There is no averment that the impugned agreement came to be terminated at any point of time. In that view of things, I have no hesitation in affirming the finding recorded by both the Courts to the effect that the application for arbitration filed by the respondent was competent.

Sh. R.S. Bajaj, then, argued that the Courts at Jalandhar had no jurisdiction to entertain the application in view of a clause in the impugned agreement to the effect that any dispute between the parties would be subject to the jurisdiction of the Courts at Nasik.

There can be no dispute with the legal proposition that if Courts at two places have jurisdiction to try a controversy, it is open to the parties to agree that the Courts at one of those places shall have jurisdiction to try the controversy. However, that exclusiveness of jurisdiction has to be pointedly indicated by the parties in the agreement. In the present case, all that the impugned clause states is that “all the proceedings and arbitration shall take place at Nasik Road unless the parties agree otherwise”.

In the present case, though the impugned agreement did

provide that all the proceedings and arbitration shall take place at Nasik Road, option was given to the parties to agree otherwise. It is in evidence that the impugned agreement was sent from Nasik to Jalandhar for acceptance by the respondent. In that view of things, the Courts at Jalandhar also have jurisdiction to try the plea. If the parties wanted to exclude the jurisdiction of the Courts other than those at Nasik, the agreement had to say so. In that eventuality, the agreement should have stated that the Courts at Nasik only shall have jurisdiction to try the controversy between the parties or that the Courts at Jalandhar shall have no jurisdiction to try the controversy. As the element of exclusive conferment of jurisdiction is missing in the impugned agreement, the plea on behalf of the petitioner deserves to be negatived.

In the light of foregoing discussion, I have no reason to differ with the findings recorded by the learned Trial Court and the learned First Appellate Court as I have not been persuaded to find any fault with the view obtained by both the Courts aforementioned.

Dismissed.

September 17, 2007 (S.D. Anand)
vkd Judge

Note : Whether referred to reporter or not : Yes/No